

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

PIU MANAGEMENT, LLC	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 4:08-cv-2719
	§	
INFLATABLE ZONE INCORPORATED	§	
	§	
Defendant.	§	

**PLAINTIFF, PIU MANAGEMENT, LLC'S COMPLAINT**

PIU Management, LLC ("PIU") for its complaint against Inflatable Zone Incorporated ("Inflatable Zone") states as follows:

**THE PARTIES**

1. PIU is a California limited liability company having a place of business at 1249 Quarry Lane, Suite 150, Pleasanton, California.
2. Inflatable Zone is a Texas corporation having a place of business at 2482 South Mason Road, Katy Texas 77450-6063.

**JURISDICTION AND VENUE**

3. This is a civil action for injunctive relief and damages arising from Inflatable Zone's violations of the Lanham Act, 15 U.S.C. § 1051 *et seq.*, violation of PIU's common law trademark rights and acts of unfair competition.
4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338 and 1367, and 15 U.S.C. § 1121.

5. This Court has personal jurisdiction over Inflatable Zone, which operates under the name INFLATABLE ZONE KATY at a location in Katy, Texas, which is within this judicial district.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b).

### **FACTS**

7. Since as early as 2001, PIU has, through authorized franchise locations provided facilities for the recreation and entertainment of children centered around the use of inflatable play structures.

8. PIU and authorized franchisee facilities allow for organized parties or drop in play time.

9. PIU, through authorized franchisees currently has more than 150 locations across the United States, including a location in Katy, Texas and three locations in Houston, Texas.

10. One franchise authorized to use PIU's marks is in Katy, Texas and has its location at 923 South Mason Road, Katy, Texas, the same street on which Inflatable Zone operates its INFLATABLE ZONE KATY location.

11. In connection with the recreation and entertainment services it provides, PIU has adopted and used the following trademarks: THE INFLATABLE PARTY ZONE; PUMP IT UP "THE INFLATABLE PARTY ZONE;" and THE INFLATABLE PARTY ZONE FOR LITTLE ONES.

12. THE INFLATABLE PARTY ZONE was first adopted by PIU at least, as early as 2000, and has been used in commerce continuously by PIU and authorized franchisees since at least 2001 in connection with entertainment and recreational services involving inflatable play structures, including providing facilities for hosting parties and drop in play time.

13. PUMP IT UP "THE INFLATABLE PARTY ZONE" was first adopted by PIU at least as early as May 2002, and it has been continuously used in commerce by PIU and authorized franchisees since then in connection with entertainment and recreational services involving inflatable play structures, including hosting parties and drop in play time.

14. THE INFLATABLE PARTY ZONE FOR LITTLE ONES was first used by PIU in February 2007, and it had been continuously used in commerce by PIU and authorized franchisees since then in connection with entertainment and recreational services involving inflatable play structures, including hosting parties and drop in play time.

15. In view of the use in commerce of the marks THE INFLATABLE PARTY ZONE; PUMP IT UP "THE INFLATABLE PARTY ZONE;" and THE INFLATABLE PARTY ZONE FOR LITTLE ONES, PIU has established common law rights in those marks (hereinafter collectively referred to as "INFLATABLE PARTY ZONE marks").

16. In addition to its common law rights, PIU is the owner of the following United States Trademark Registrations:

Registration Number	Mark	Registration Date	Goods and Services
3104073	THE INFLATABLE PARTY ZONE	June 13, 2006	Entertainment and recreation services, namely, providing facilities with large inflatable play structures for children's parties
3104051	PUMP IT UP "THE INFLATABLE PARTY ZONE" (stylized)	June 13, 2006	Entertainment and recreation services, namely, providing facilities with large inflatable play structures for children's parties
3320254	THE INFLATABLE PARTY ZONE FOR	October 23, 2007	Entertainment and recreation services,

Registration Number	Mark	Registration Date	Goods and Services
	LITTLE ONES		namely, providing facilities with large inflatable play structures for children's parties

17. In connection with its use of its INFLATABLE PARTY ZONE marks, PIU or its licensees have spent and continue to spend substantial sums on advertising.

18. As a result of its longstanding use and significant advertising, the INFLATABLE PARTY ZONE marks have come to be strongly associated with a single source, namely PIU and those authorized by PIU.

19. The INFLATABLE PARTY ZONE marks are distinctive and have acquired substantial secondary meaning and notoriety.

20. On information and belief, Inflatable Zone has an operating location at 2482 South Mason Road, Katy Texas, at which, services that directly compete with PIU's services are provided.

21. On information and belief, Inflatable Zone provides entertainment and recreational services including providing facilities for the hosting of parties and drop in play time centered around inflatable play structures.

22. On information and belief, Inflatable Zone began providing entertainment and recreational services including providing facilities for the hosting of parties and drop in play time centered around inflatable play structures on or around December 2007.

23. On information and belief, since it began providing services centered around inflatable play structures in December 2007, Inflatable Zone has been using in connection with

those services, as a mark, identifier, trade name and domain name INFLATABLE ZONE KATY and/or INFLATABLE ZONE INCORPORATED.

24. Since Inflatable Zone began providing its services under the name INFLATABLE ZONE KATY and/or INFLATABLE ZONE INCORPORATED consumers have actually been confused as to the relationship between PIU's Katy, Texas location and Inflatable Zone's location.

25. The aforementioned confusion and the likelihood of continued confusion, mistake or deception has caused and will continue to cause actual losses to PIU, including losses to its Katy Texas franchise location, and harm to its good will.

26. Inflatable Zone's use of both INFLATABLE ZONE KATY and INFLATABLE ZONE INCORPORATED is without the authorization or consent of PIU or any of its licensees or franchisees.

27. Inflatable Zone's use of INFLATABLE ZONE KATY and INFLATABLE ZONE INCORPORATED first started well subsequently to PIU's use of its INFLATABLE PARTY ZONE marks and well after PIU established its common law and registered trademark rights in the INFLATABLE PARTY ZONE marks.

28. In October 2007, PIU attempted to give Inflatable Zone actual notice of its trademark rights and Inflatable Zone's trademark infringement.

29. The October 2007 notice was returned as undeliverable, so actual notice was resent in January 2008, which notice was received by Inflatable Zone.

30. Notwithstanding PIU's prior rights, on information and belief, Inflatable Zone continues to use the marks INFLATABLE ZONE KATY and INFLATABLE ZONE INCORPORATED.

31. In information and belief, Inflatable Zone's adoption and use of INFLATABLE ZONE KATY and INFLATABLE ZONE INCORPORATED was with full knowledge of PIU's common law and registered rights and is an attempt to trade off the significant good will established by PIU.

**COUNT I**  
**(Trademark Infringement Under 15 U.S.C. § 1114 and Common Law)**

32. The allegations of all the paragraphs above are restated and re-alleged as though fully set forth herein.

33. PIU developed, adopted and began using its INFLATABLE PARTY ZONE marks before Inflatable Zone adopted and began using INFLATABLE ZONE KATY and INFLATABLE ZONE INCORPORATED.

34. In addition to its rights in THE INFLATABLE PARTY ZONE and related trademarks at common law, PIU is the owner of U.S. Federal Registration Nos.: 3104073; 3104051; and 3320254.

35. Without consent from PIU, Inflatable Zone is using in commerce INFLATABLE ZONE KATY and/or INFLATABLE ZONE INCORPORATED as its corporate name and throughout its business, including in connection with the advertising and sale of goods and services that are competitive with or identical to the goods and services with which PIU uses its INFLATABLE PARTY ZONE marks.

36. Inflatable Zone's past, present and ongoing actions constitute infringement of PIU's marks by using a mark that is likely to cause confusion, mistake or to deceive under 15 U.S.C. § 1114 and common law.



37. Inflatable Zone's infringing actions have damaged PIU in an amount to be determined at trial.

38. Inflatable Zone's infringing actions will continue unless enjoined by this Court.

39. Inflatable Zone's infringing actions have been willful and with actual knowledge of PIU's rights and an intent to cause confusion, mistake or to deceive as to the source or sponsorship of Inflatable Zone's services.

40. PIU has no adequate remedy at law, and will suffer irreparable harm to its business, reputation and good will unless Inflatable Zone's unlawful conduct is enjoined by this Court.

**COUNT II**  
**(False Designation of Origin Under 15 U.S.C. § 1125(a))**

41. The allegations of all the paragraphs above are restated and re-alleged as though fully set forth herein.

42. Inflatable Zone's unauthorized use of INFLATABLE ZONE KATY and INFLATABLE ZONE INCORPORATED has a substantial effect on interstate commerce.

43. Inflatable Zone's false designations of origin have been made in connection with services from which it makes a profit.

44. INFLATABLE ZONE KATY and INFLATABLE ZONE INCORPORATED as used by Inflatable Zone on and throughout its business constitutes a false designation of origin pursuant to 15 U.S.C. § 1125(a), because it is likely to cause confusion, cause mistake or to deceive as to an affiliation, connection, or association of Inflatable Zone with PIU or to cause confusion, mistake or deception as to the origin, sponsorship or approval of Inflatable Zone's products and services by PIU.

45. Inflatable Zone's actions are and have been with full knowledge of PIU's rights, and constitute a willful attempt to trade off the good will established by PIU by causing consumer confusion, mistake or deception.

46. PIU has been damaged by Inflatable Zone's false designations of origin in an amount to be determined at trial.

47. Inflatable Zone's infringing actions will continue unless enjoined by this Court.

48. PIU has no adequate remedy at law, and will suffer irreparable harm to its business, reputation and good will unless Inflatable Zone's unlawful conduct is enjoined by this Court.

### **RELIEF REQUESTED**

WHEREFORE, PIU requests that this Court:

A. Enter judgment that it has jurisdiction over the parties and the subject matter of this action, and that venue is proper in this District;

B. Enter judgment against Inflatable Zone on the Counts of this Complaint;

C. Enter judgment that PIU's marks and registrations asserted herein are valid;

D. Enter judgment that Inflatable Zone has infringed PIU's marks, has committed acts of false designation of origin and unfair competition under the Lanham Act and at common law;

E. Enter judgment that Inflatable Zone's infringement and other statutory and common law violations have been knowing and willful and that this case is exceptional;

F. Enter a preliminary and permanent injunction requiring Inflatable Zone, as well as all principals, owners, agents, representatives, employees, successors and assigns to immediately and permanently cease all advertising and sales of any services and/or goods under



INFLATABLE ZONE KATY, INFLATABLE ZONE INCORPORATED and/or any mark confusingly similar to PIU's INFLATABLE PARTY ZONE marks and also discontinue using as a trade name, company name, domain name or any source identifier, including as the name of a retail location, INFLATABLE ZONE KATY, INFLATABLE ZONE INCORPORATED and/or anything confusingly similar to PIU's INFLATABLE PARTY ZONE marks;

G. Order that Inflatable Zone file and serve within thirty (30) days a report in writing, under oath, setting forth the manner and form in which it has complied with the Court's orders and injunction;

H. Award PIU damages including Inflatable Zone's profits, compensatory damages, and the costs of this action, including attorney's fees and treble damages;

I. Award PIU such further relief as this Court may deem just and proper.

**JURY DEMAND**

PIU demands a trial by jury of all issues so triable.

Respectfully submitted,  
PIU Management, LLC  
By its counsel,

Dated: September 8, 2008

/s/ Gary M. Gelfman  
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